

**641—201.13(135,75GA,ch158) Investment.**

**201.13(1)** All ODS assets, including unencumbered funds referenced in subrule 201.12(2), shall be invested only in securities or other investments as follows:

- a.* All investments made pursuant to this subrule shall have investment qualities and characteristics such that the speculative elements are not predominant.
- b.* Financial terms relating to an ODS have the meanings assigned to them under statutory accounting methods.
- c.* Investments shall be valued in accordance with the valuation procedures established by the National Association of Insurance Commissioners, unless the commissioner requires or finds another method of valuation reasonable under the circumstances.
- d.* If an investment qualifies under more than one subrule, the ODS may elect to hold the investment under the subrule of its choice.

**201.13(2)** An ODS's investments shall be held in its own name or the name of its nominee, except as follows:

- a.* Investments may be held in the name of a clearing corporation or of a custodian bank or in the name of the nominee of either on the following conditions:

- (1) The clearing corporation, custodian bank, or nominee must be legally authorized to hold the particular investment for the account of others.

- (2) When the investment is evidenced by a certificate and held in the name of a custodian bank or the nominee of a custodian bank, a written agreement shall provide that certificates so deposited shall at all times be kept separate and apart from other deposits with the depository, so that at all times they may be identified as belonging solely to the ODS making the deposit.

- (3) If a clearing corporation is to act as depository, the investment may be merged or held in bulk in the name of the clearing corporation or its nominee with other investments deposited with the clearing corporation by any other person, if a written agreement between the clearing corporation and the ODS provides that adequate evidence of the deposit is to be obtained and retained by the ODS or a custodian bank.

- b.* An ODS may loan stocks or obligations held by it under this rule to a broker-dealer registered under the federal Securities Exchange Act of 1934 or to a member bank. The loan must be evidenced by a written agreement which provides all of the following:

- (1) That the loan shall be fully collateralized by cash or obligations issued or guaranteed by the United States or any agency or an instrumentality of the United States and that the collateral shall be adjusted as necessary each business day during the term of the loan to maintain the required collateralization in the event of market value changes in the loaned securities or collateral.

- (2) That the loan may be terminated by the ODS at any time and that the borrower shall return the loaned stocks or obligations within five business days after termination.

- (3) That the ODS shall have the right to retain the collateral or use the collateral to purchase investments equivalent to the loaned securities if the borrower defaults under the terms of the agreement and that the borrower shall remain liable for any losses and expenses incurred by the association due to default that are not covered by the collateral.

- c.* An ODS may participate through a member bank in the United States federal reserve book entry system, and the records of the member bank shall at all times show that the investments are held for the ODS or for specific accounts of the ODS.

- d.* An investment may consist of an individual interest in a pool of obligations or a fractional interest in a single obligation if the certificate of participation or interest or the confirmation of participation or interest in the investment is issued in the name of the ODS, the name of the custodian bank, or the nominee of either, and, if the interest as evidenced by the certificate or confirmation is, if held by a custodian bank, kept separate and apart from the investments of others so that at all times the participation may be identified as belonging solely to the ODS making the investment.

- e.* Transfers of ownership of investments held as described in subparagraph 201.13(2) "a"(3) and paragraphs 201.13(2) "c" and "d" may be evidenced by bookkeeping entry on the books of the issuer of

the investment, its transfer or recording agent, or the clearing corporation without physical delivery of a certificate evidencing the ODS's investment.

**201.13(3)** Except as provided in paragraph 201.13(2) "e," if an investment is not evidenced by a certificate, adequate evidence of the ODS's investment shall be obtained from the issuer or its transfer or recording agent and retained by the ODS, a custodian bank, or clearing corporation. Adequate evidence, for purposes of this subrule, means a written receipt or other verification issued by the depository or issuer or a custodian bank which shows that the investment is held for the ODS.

**201.13(4)** Except as otherwise permitted by this rule, an ODS licensed under this chapter shall only invest in the following:

*a. United States government obligations.* Obligations issued or guaranteed by the United States or an agency or instrumentality of the United States.

*b. Certain development bank obligations.* Obligations issued or guaranteed by the international bank for reconstruction and development, the Asian development bank, the inter-American development bank, the export-import bank, the world bank, or any United States government-sponsored organization of which the United States is a member, if the principal and interest is payable in United States dollars. An ODS shall not invest more than 5 percent of its total admitted assets in the obligations of any one of these banks or organizations and shall not invest more than a total of 10 percent of its total admitted assets in the obligations authorized by this subrule.

*c. State obligations.* Obligations issued or guaranteed by a state, a political subdivision of a state, or an instrumentality of a state.

*d. Canadian government obligations.* Obligations issued or guaranteed by Canada, by an agency or province of Canada, by a political subdivision of such province, or by an instrumentality of any of those provinces or political subdivisions.

*e. Corporate and business trust obligations.* Obligations issued, assumed, or guaranteed by a corporation or business trust organized under the laws of the United States or a state, or the laws of Canada or a province of Canada, provided that a company shall not invest more than 5 percent of its admitted assets in the obligations of any one corporation or business trust. Investments shall be made only in investment grade bonds.

*f. Stocks.* Common stocks, common stock equivalents, mutual fund shares securities convertible into common stocks or common stock equivalents, or preferred stocks issued or guaranteed by a corporation incorporated under the laws of the United States or a state, or the laws of Canada or a province of Canada. Aggregate investments in non-dividend-paying stocks shall not exceed 5 percent of unencumbered funds.

(1) Stocks purchased under this lettered paragraph shall not exceed 50 percent of unencumbered funds. With the approval of the commissioner of insurance, an ODS may invest any amount in common stocks, preferred stocks, or other securities of one or more subsidiaries provided that after such investments the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) An ODS shall not invest more than 10 percent of its unencumbered funds in the stocks of any one corporation.

*g. Home office real estate.* Funds may be invested in a home office building, at the direction of the board of directors and with the prior approval of the commissioner of insurance. An ODS shall not invest more than 25 percent of its total admitted assets in such real estate. With the prior approval of the commissioner, an ODS may exceed the real estate investment limitation to effectuate a merger with, or the acquisition of, another ODS.